IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18976 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GAMABHAI PRATAPBHAI & 2 - Petitioner(s)

Versus

STATE OF GUJARAT & 7 - Respondent(s)

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Appearance :

MR MA KHARADI for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6,1.2.7 - 3.
Mr. MR Mengdey, AGP for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 8.
MR UM SHASTRI for Respondent(s) : 4 - 8.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/10/2005

ORAL JUDGMENT

Rule. In this petition under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat,

dated 18.7.2005 in Revision Application No. 25/2004 in allowing the revision application filed by the private respondents herein and quashing and setting aside the order passed by the Collector, Dahod, dated 22.7.2004 in Revision Application No. 98/2003 and restoring the order passed by the Assistant Collector, Dahod dated 19th August 2003 in RTS Appeal No. 1/2003.

2. The dispute is with regard to mutation Entry No. 272 dated 8.7.1994 with respect to land bearing Revenue Survey No. 15 situate at Village Vakhasiya, Taluka-Dhrangadhra. It appears that names of the private respondents herein came to be deleted from the Revenue Entry No. 272 dated 8.7.1994 and the said Entry came to be challenged by the private-respondents herein after a period of 9 years before the Assistant Collector, Devgadhbaria being RTS Appeal No. 1/2003 and the Assistant Collector, Devgadhbaria vide his order dated 8.7.1994 allowed the said appeal and set aside the Entry No. 272 dated 8.7.1994. Being aggrieved and dissatisfied with the same, the petitioners herein preferred revision application before the Collector, Dahod, and the Collector, Dahod, vide judgment and order dated 22.7.2004 passed in RTS Revision Application No. 98/2003 partly allowed the said revision application, set aside the order passed by the Assistant Collector, Devgadhbaria and directed to hold a fresh enquiry. Being aggrieved and dissatisfied with the

same, the private respondents herein preferred Revision Application No. 25/2004 before the Joint Secretary (Appeals), Revenue Department, State of Gujarat and the Joint Secretary (Appeals) by order dated 18th July 2005 allowed the said revision application and quashed and set aside the order passed by the Collector, Dahod, dated 22.7.2004 and restored the order passed by the Assistant Collector, Devgadhbaria dated 19.8.2003 in RTS Appeal No. 1/2003. Being aggrieved and dissatisfied with the same, the petitioners have preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. It is submitted on behalf of the petitioners that Entry No. 272 was mutated in the year 1994 by which names of the private respondents came to be deleted and the same came to be challenged by them after a period of 9 years before the Deputy Collector, Devgadhbaria, i.e.,after unreasonable period and therefore the Assistant Collector ought not to have entertained the said appeal and ought to have continued the Entry No. 272. It is also further submitted that the said dispute with regard to title cannot be decided by the Revenue authorities and the question whether there was partition or not cannot be decided in RTS proceedings and therefore it is requested to allow the present Special Civil Application and set aside the order passed by the Secretary (Appeals).

4. Shri B.G. Patel, learned advocate appearing on behalf of private respondents, while trying to support the judgment and order passed by the Joint Secretary (Appeals) has submitted that while mutating Entry No. 272 dated 8.7.1994 by which names of private respondents came to be deleted they were not heard; no application was given by them; under the guise of family arrangement the names of private respondents came to be deleted; the same has been rightly set aside by the Assistant Collector which decision has been rightly confirmed by the Joint Secretary (Appeals); and therefore it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing for the parties. It is not in dispute that the dispute is with regard to Revenue Entry No. 272 which was decided on 8.7.1994. It is also not in dispute that the said Entry came to be challenged by the private respondents herein before the Assistant Collector, Devgadhbaria after a period of 9 years which is an unreasonable period. Therefore the Assistant Collector, Devgadhbaria was not justified in entertaining the said appeal by allowing the same and quashing and setting aside the Entry No. 272 after a period of 9 years. The dispute is with regard to title and whether there was any family arrangement or not. If there is any dispute with

regard to title, the parties are to be relegated to a Civil Court for establishing and crystalizing their rights. However, the Revenue authority has no jurisdiction to consider the dispute with regard to title. As held by the Hon'ble Supreme Court as well as by this Court in catena of judgments, mutation Entry in Revenue record does not, ipso facto, confer any right, title or interest in favour of any person in whose favour such entry is made. The mutation entry is made only for fiscal purposes, i.e., for the purpose of recovering revenue by the competent authority from persons who are in possession of land in question. Under the circumstances and as stated above, as the Entry came to be challenged after a period of 9 years, the Assistant Collector was not justified in entertaining the appeal and setting aside the same, and the Collector was justified in setting aside the order passed by the Assistant Collector. Accordingly, the Joint Secretary (Appeals) has materially erred in allowing the Revision Application and restoring the order passed by the Assistant Collector, Dahod which was after a period of 9 years of making the Entry.

6. For the reasons stated above, the petition succeeds. The judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat, dated 18.7.2005 in Revision Application No.

25/2004 is quashed and set aside and the order passed by the Collector, Dahod, dated 22.7.2004 in RTS Revision Application No. 98/2003 is hereby restored. However, it is made clear that it will be open for the parties to approach the Civil Court for establishing/crystalizing their rights and the same may be considered by the Civil Court in accordance with law and on merits. Rule is made absolute to the aforesaid extent, however, with no order as to costs.

[M.R. Shah, J.]

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